

BOISE, THURSDAY, MAY 1, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

J-U-B ENGINEERS, INC., an Idaho)
corporation,)
)
Plaintiff-Appellant,)
)
v.)
)
SECURITY INSURANCE COMPANY OF)
HARTFORD, a Connecticut corporation;)
DPIC COMPANIES, INC., a California)
corporation; and THOMAS H. LOPEZ, an)
individual; HOWARD, LOPEZ AND)
KELLY, an Idaho professional limited)
liability company, and JOHN DOES 1-XX,)
)
Defendants-Respondents.)

Docket No. 34239

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Cheri C. Copsey, District Judge.

Capitol Law Group, PLLC, Gooding, for appellant.

Moffatt, Thomas, Barrett, Rock & Fields, Boise, for respondents Security Insurance Company of Hartford and DEPIC Companies, Inc.

Hepworth, Lezamiz & Janis, Boise, for respondents Lopez & Howard, Lopez & Kelly.

This appeal concerns the legal defense of J-U-B Engineers, Inc. (J-U-B) in a separate lawsuit concerning engineering work rendered by J-U-B. Dick and Marlene Chapman brought suit against J-U-B regarding engineering services performed by J-U-B. J-U-B had an insurance policy with Security Insurance Company of Hartford (Security Insurance) that provided that Security Insurance would defend J-U-B in any lawsuits filed against it. The insurance policy also prevented Security Insurance from settling any claim against J-U-B without J-U-B's consent. In accordance with the insurance policy, J-U-B retained Thomas Lopez to defend J-U-B in the underlying litigation. Security Insurance paid all of the attorney fees and costs associated with J-U-B's defense. Lopez obtained a grant of summary judgment in favor of J-U-B.

After prevailing on summary judgment, J-U-B wished to pursue a claim of attorney fees and costs against the Chapmans. Lopez, however, did not recommend pursuing attorney fees and costs, and Security Insurance agreed. The Chapmans filed a motion for reconsideration

shortly after J-U-B obtained a grant of summary judgment, however, the Chapmans communicated to Lopez that they would voluntarily dismiss their case, with prejudice, if J-U-B elected not to pursue an award of attorney fees and costs. Lopez, acting on Security Insurance's advice, agreed to the Chapman's offer.

J-U-B filed this suit, alleging professional negligence against Lopez, and a breach of the insurance contract and a violation of the covenant of good faith and fair dealing against Security Insurance. J-U-B argues that Lopez and Security Insurance settled the Chapman lawsuit without its consent. The district court below granted summary judgment in favor of Lopez and Security Insurance. The district court found that J-U-B could not prove that it was damaged by the outcome of the Chapman litigation and that Security Insurance did not breach the insurance policy. On appeal, J-U-B argues that it has suffered damage to its reputation and that it is now a target for frivolous lawsuits as a result of the Chapman litigation. Additionally, J-U-B argues that Security Insurance breached the insurance contract.

BOISE, THURSDAY, MAY 1, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PETER DEELSTRA,

Plaintiff-Appellant,

V.

STEVEN HAGLER and JANE DOE
HAGLER, husband and wife,

Defendants-Respondents.

Docket No. 34265

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Jerome County. Hon. John K. Butler, District Judge.

DeHaan & Associates, Twin Falls, for appellant.

Jeffrey J. Hepworth, P.A. & Associates, Twin Falls, for respondents.

In October 2005, Peter Deelstra sued Steve Hagler on a breach of contract theory. Before the case proceeded to jury trial, the parties agreed to vacate the trial and resolve the matter through arbitration. The arbitrator found that Hagler did not breach the contract, but declined to award attorney fees under I.C. § 12-120(3), leaving the matter to the district court. When Hagler moved to dismiss the civil complaint, he also requested attorney fees under I.C. § 12-120(3), which the district court granted. Deelstra appealed, arguing the district court improperly modified the arbitration award when it granted Hagler's request for attorney fees and that it improperly awarded attorney fees incurred for an arbitration proceeding in contravention of I.C. § 7-910.

BOISE, THURSDAY, MAY 1, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

V.

TIM ALLEN TIMBANA,

Defendant-Appellant.

Docket No. 34624

Appeal from the District Court of the Sixth Judicial District of the State of Idaho,
Bannock County. Hon. Peter D. McDermott, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for Appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for Respondent.

On March 28, 2005, the district court revoked Tim Allen Timbana's (Timbana) probation, reinstated his original sentence for felony driving under the influence (DUI), and denied his motion for a reduction of his sentence. Timbana appeals the district court's order on grounds that the court abused its discretion in revoking his probation and imposing his original sentence of five years, three years fixed, for felony DUI; and that the prosecutor's violation of the plea agreement entitles him to a new disposition hearing before a different judge.

On December 29, 1999, Timbana was charged with felony DUI with an excessive alcohol concentration, and the district court sentenced him to five years, with three years fixed, and retained jurisdiction for 180 days. The written minute entry and order, as well as subsequent written minute entries and orders of the district court, erroneously recorded

the sentence as four years fixed instead of three. Timbana successfully completed the retained jurisdiction program, and the court suspended his sentence and put him on probation for five years.

Timbana violated his probation twice from 2004 to 2005. Prior to the probation violation evidentiary hearing on the second probation violation incident, Timbana's counsel negotiated an agreement with a deputy prosecutor whereby Timbana would admit to violating probation in exchange for the prosecutor's promise to recommend that the underlying sentence run concurrently with the 2004 felony DUI sentence and not to oppose Timbana's I.R.C.P. 35 motion for reduction of his original sentence. At the hearing, after Timbana admitted to the probation violation, another deputy prosecutor – who was not aware of the agreement – opposed the reduction of Timbana's sentence.

Timbana's counsel alerted the deputy prosecutor to the agreement, and the prosecutor apologized to the court for not adhering to the agreement, withdrew his opposition to Timbana's Rule 35 motion, and said he would defer to the discretion of the court. Timbana's counsel did not further object.

The district court revoked Timbana's probation, reinstated his original sentence, and denied his motion for reduction of the sentence. Timbana timely appealed. The Idaho Court of Appeals initially heard Timbana's appeal and affirmed the district court. This Court then granted Timbana's petition for review.

BOISE, FRIDAY, MAY 2, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES RUFFING,)	
)	
Plaintiff-Appellant-Cross Respondent,)	
)	
v.)	
)	Docket No. 33514
ADA COUNTY PARAMEDICS and)	
BARBARA LINDY MC PHERSON,)	
and JOHN DOES I through II)	
)	
Defendants-Respondents-Cross)	
Appellants.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Richard S. Owen, Nampa, for appellant.

Greg Bower, Ada County Prosecuting Attorney's Office, Boise, for respondents.

Charles Ruffing sued Ada County Paramedics and Barbara McPherson after he sustained an injury while on duty as a Boise City firefighter. On the night of the incident, Ruffing caught his knee between the ambulance and a parked car as he assisted McPherson in backing the ambulance. The district court granted summary judgment in favor of Ada County on the basis that the firefighter's rule and Idaho's worker's compensation laws barred Ruffing's recovery in a separate tort action. The firefighter's rule precludes tort recovery for a fire fighter when his injuries are caused by the same conduct that required his official presence. Under worker's compensation laws, an injured employee is usually able to obtain compensation only through that avenue and not through a civil damage suit. Ruffing appeals, arguing the district court erred in applying the firefighter's rule and worker's compensation laws here. Ada County cross-appeals, arguing the district court erred when it denied its expert witness costs.

BOISE, FRIDAY, MAY 2, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	Docket No. 32902
v.)	
)	
NICK MC DOWELL HENSLEY,)	
)	
Defendant-Appellant.)	

Appeal from the Fourth Judicial District of the State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Molly J. Huskey, State Appellate Public Defender, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent..

Nick McDowell Hensley was convicted by a jury for three counts of lewd conduct with a minor under the age of sixteen, and one count of sexual abuse of a minor under the age of sixteen, in violation of I.C. §§ 18-1506-1508. Prior to trial, the district court, Honorable Michael R. McLaughlin presiding, granted the State's motion in limine to exclude a recording of a conversation between J. H. (Hensley's daughter) and Tonya Bingle (J. H.'s mother). The trial court found that the recorded conversation violated the Idaho Communications Security Act (I.C.S.A.). I.C. §§ 18-6701 to -6725. Under the I.C.S.A., all illegally obtained evidence is excluded from trial. I.C. § 18-6705. Hensley appeals to this Court, contending that: (1) the trial court erred by granting the State's motion to exclude the recorded conversation; (2) Hensley has the power to consent to the recorded conversation on behalf of J. H.; and (3) that this Court denied him due process during this appeal by denying Hensley's attorney's request to listen to the recorded conversation.

BOISE, FRIDAY, MAY 2, 2008 AT 11:10 A.M.

IN THE SUPRME COURT OF THE STATE OF IDAHO

KENNETH DEAN SCHULTZ,

Plaintiff-Respondent,

v.

RHONDA RAE SCHULTZ,

Defendant-Appellant.

Docket No. 34790

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Terry R. McDaniel, Magistrate Judge.

Vaughn W. Fisher, Jr., Boise, for appellant.

Brooks Law, P.C., Nampa, for respondent.

Appellant Rhonda Rae Schultz (Rhonda) appeals from a magistrate's order requiring her to return to Idaho with her minor daughter or relinquish custody of the child to Respondent Kenneth Dean Schultz (Kenneth).

Kenneth and Rhonda were married in Boise on February 25, 2005. Their only child was born on May 21, 2005. On February 2, 2007, Kenneth was arrested for domestic violence against his wife; he later pleaded guilty to domestic battery in the presence of a minor. After this instance of abuse, Rhonda fled to Oregon with the couple's young daughter. Rhonda immediately filed for a restraining order in Oregon, which was granted. A month later, Kenneth filed for divorce in Boise. While that action was pending, the Oregon court granted Kenneth temporary supervised visitation. The Idaho and Oregon courts then agreed jurisdiction was proper in Idaho.

After Rhonda fled to Oregon, and after the Oregon court granted him visitation, Kenneth filed a motion requesting that the Idaho court order Rhonda to return with the child to Boise or surrender custody of the child to Kenneth. The magistrate court granted Kenneth's motion. Four days later Rhonda filed a motion for permissive appeal and stay, but this was denied. She then petitioned this Court for permission to appeal and stay the execution of the magistrate's order. This Court granted her motion.

On appeal, Rhonda argues that the magistrate court abused its discretion by granting Kenneth's motion. She asserts that the court failed to recognize it had the discretion to deny the motion and that the decision is not supported by substantial and competent evidence.